

# **Abuse of Dominant Position - Individual Forms of Abusing Practices under Community and Czech law**

## **Abstract**

Competition is a basic mechanism of the market economy. It encourages companies to provide consumers products they want, encourages innovation, and pushes the prices down. In order to be effective, competition needs independent undertakings which are subject to the competitive pressure. That was the reason why Competition law has developed. It should pre-eminently ensure to preserve the competition on the market. Competition law comprising three pillars, namely cartel agreements prohibition, merger control and the law against abuse of dominant position. This thesis focuses on the last mentioned branch of the competition law. Attention is aimed to the individual possible forms of abusive conduct of dominant undertakings. The text explicates this problem from the Czech and European law perspective and attempts to explain individual forms of abusing practices in the light of case law. It only contains substantial law, procedural law is not covered.

The main aim of the thesis is to bring out the comparison between the legislation relating to the individual forms of abusing practices in the European law and Czech law and to find out if the approach of the competition authorities on the European and Czech level to the investigation of abusing practices is the same or not? To survey this an extensive analysis of case law is presented.

I have chosen this topic because I find very interesting to observe how the world of business is under the circumspect control of competition authorities. Furthermore is very intriguing to survey how was the law of abuse of dominant position developing over time.

The structure of the theses is as follows. It is composed of three main chapters: Chapter one is introductory and describes the law of abuse of dominant position in general view. The object of interest is to introduce reader to the problem and to explain how an abuse of dominant position is regulated by the European law as well as by the Czech law. Attention is paid also to the basic division of individual forms of abusing practices.

The chapter two deals with some of the *price – based practices* and it is subdivided into four parts. Part one describes Excessive prices, part two deals with Predatory prices, part three focuses on Discriminatory prices and finally part four is devoted to the Fidelity rebates.

Each of these parts has its own structure: on the first place the general characteristic of the practice is discussed. There is described the basis of the concrete matter and it is explained why such a practice has to be pursued as abusive one. Subsequently the European law and legal practice of Commission and European Court of Justice is illustrated. Substantial attention is paid to the analysis of the leading cases relating to the anticompetitive behaviour in question and also the development of these judicial decisions is examined. Finally is reported on the relevant Czech legislation and Czech legal practice relating to the issue on question. In the end of Chapter Two is presented the comparison between European and Czech law addressing to the price – based practices. There are mentioned some similarities and differences between them. Lastly my personal evaluation of the discussed issue is presented and eventually the differences in the approach of competition authorities is mentioned.

Chapter three examines some of *non – price practices* and consists of five parts. Part one focuses on Tying and Bundling. Part two investigates Limiting production, markets or technical development. Part three addresses the issue of Refusal to deal. Part four deals with Essential Facilities doctrine and finally part five concentrates on Exclusive contracts. The structure of each of mentioned passage is the same as in the previous Chapter two. In the end of Chapter three is drawn the comparison between the European and Czech legislation relating to non-price practices and basic similarities and differences are highlighted. Last but not least my personal opinions and evaluation of the previous analysis is presented.

The text is closed by the conclusion emphasizing some of the general findings of the thesis. In my opinion the main aim of the thesis pointed out above was reached.

After the conclusion list of relevant sources is included, as well as the list of relevant applied judicial and administrative decision and used abbreviations.